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10/728,441	12/05/2003	Susan Levin	K1C2-44500	9379
26252 7590 03/11/2008 KELLY LOWRY & KELLEY, LLP 6320 CANOGA AVENUE SUITE 1650 WOODLAND HILLS, CA 91367				
EXAMINER				
KRASNIC, BERNARD				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/728,441

Applicant(s)

LEVIN ET AL.

Examiner

BERNARD KRASNIC

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/09/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8-14, 17 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-14, 17 and 25-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. The Request for Continued Examination filed 01/09/2008 have been entered and made of record.
2. The Applicant has canceled claim(s) 5-6.
3. The application has pending claim(s) 1-4, 8-14, 17, and 25-33.
4. In response to the Request for Continued Examination filed on 01/09/2008:
The "Objections to the claims" have been entered and therefore the Examiner withdraws the objections to the claims.

The Examiner agrees with the Applicant's arguments ["Claims 30 and 32 were rejected ..." in page 9] toward the 35 U.S.C. 112 first paragraph rejection and therefore the Examiner withdraws the rejection under 35 U.S.C. 112 first paragraph.

The "Claim rejections under 35 U.S.C. 112, second paragraph" have been entered and therefore the Examiner withdraws the rejections under 35 U.S.C. 112 second paragraph.
5. Applicant's arguments with respect to claim(s) 1-4, 8-14, 17, and 25-33 have been considered but are moot in view of the new ground(s) of rejection because of the Request for Continued Examination (RCE).

6. Applicant's arguments filed 01/09/2008 have been fully considered but they are not persuasive.

The Applicant alleges, "The cited prior art ..." in pages 10-11, and states respectively that the prior art reference Tracy fails to teach "manufacturing a good having a color" and moreover fails to teach labeling a good with a matching identification code, or that the matching identification code can be used to identify other similarly labeled goods with a matching or harmonious color combination. The Examiner agrees that Tracy fails to specifically teach "manufacturing a good having a color" as discussed in page 3 of the Examiner's Final Office Action dated 10/15/2007. However the Examiner disagrees because Tracy does teach labeling a good with a matching identification code and that the matching the identification code can be used to identify other similarly labeled goods with a matching or harmonious color combination [see Tracy, col. 5, lines 7-62, col. 4, lines 57-65, existing fabric, fiber, paint chip or other samples are used to match a color and value using the color wheel along with the preference of a two, three or four color harmonious balanced color combination {the noted color combination and color value are considered to be the identification code equivalent}].

The Applicant alleges, "Rice teaches a color selection and coordination ..." in page 11, and states respectively that firstly nothing in the prior art reference Rice suggests labeling the paint with identification codes that identify matching colors or other colors of the same color family and that secondly nothing in Rice suggests generating a color scheme that matches anything other than paint colors. Firstly, the

Examiner disagrees because the secondary reference Tracy was used to teach the family color indicia / color selection group [see Tracy, col. 3, lines 50-57] as was discussed in the art rejection toward claims 2 and 12 for example in the Examiner's Final Office Action dated 10/15/2007. Secondly, in response to applicant's argument that the reference Rice fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., generating a color scheme that matches anything other than paint colors) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Also, Rice does suggest generating a color scheme for fabric and paint (not only paint, see Rice, paragraphs [0110]-[0112]).

The Applicant alleges, "Applicant has previously addressed the inapplicability ..." in page 11, and states that Rice, Tracy and the prior art reference "Learning Web Design" fail to teach the claimed limitation. However the Examiner disagrees because firstly Rice does teach selecting an identification code representing a color match with the color of the good and labeling the good with the identification code or a color name representing the identification code, to identify the color of the good (see Rice, paragraphs [0110]-[0112], the fabric or paint is scanned to allow a selection of the identification code or color code or color name to be determined by searching the color database for a match to mark a completion of the scan and labeling by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification). The Examiner secondly disagrees because the prior art

reference "Learning Web Design" is used just to further show how obvious assigning color names to color codes actually is [this prior art reference "Learning Web Design" is not actually part of the claim rejection, it is just a further showing].

The Applicant alleges, "None of the cited references address the ..." in pages 11-12, and states that none of the cited references address the existence of the problem solved by the present invention. However the Examiner disagrees because Rice is essentially solving the same problem by having codes and color names to label the fabric or paint for the consumer. Also in response to applicant's argument that the cited reference Rice is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Rice definitely is in the same field of endeavor because Rice is labeling goods [fabrics and paint samples] with codes and color names for the consumer which is similar to the Applicant's present invention.

The Applicant alleges, "With regard to claims 25-26 and 28-33 ..." in page 12, and states respectively that the Office Action failed to address the limitation requiring submitting the goods to a governing body to compare and match the color of each of the goods to an assigned unique identification code and color name. However the Examiner disagrees because the Examiner's Final Office Action dated 10/15/2007 does discuss the Examiner's broadest reasonable claim language interpretation toward this

claim language for example in page 12 in regards to claim 25; the governing body was discussed to be Rice's user and/or scanner.

The Applicant alleges, "In addition, claims 26, 29 and 31 ..." in page 12, and states respectively that the cited references don't suggest labeling goods with indicia representing that the governing body has compared and matched the color of the good with the unique identification code. However the Examiner disagrees because the Examiner's Final Office Action dated 10/15/2007 does discuss the Examiner's broadest reasonable claim interpretation toward this claim language for example in page 12 in regards to claim 26; Rice in paragraphs [0110]-[0112] discusses how the user and/or scanner compare and match the fabric or paint to the database of color names, numbers or codes and the fabric or paint is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification.

Therefore, claims 1-4, 8-14, 17 and 25-33 are still not in condition for allowance; the claim rejections will be further discussed below.

Claim Objections

7. Claim 12 is objected to because of the following informalities:

Re Claim 12, line 9: "codes and/or a color names" should be -- codes and/or color names --.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 8-9 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claim 8: The limitation "The method of claim 6" renders this claim indefinite because claim 6 was canceled.

Re Claim 9, line 2: The limitation "the color selector device" lacks clear antecedent basis.

Re Claim 17, lines 2-3: The limitation "the color selector device" lacks clear antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-4, 8-14, 17, and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rice et al (US 2005/0100210 A1, as applied in previous Office Action) in view of Tracy et al (US 6,139,325, as applied in previous Office Action).

Re Claim 12: Rice discloses a method for creating a color matching and coordinating reference system / scan desired starting color for use by manufacturers and consumers of goods / user of fabric or paint (see paragraphs [0110]-[0112]), comprising the steps of assigning a unique identification code and color name / database of color names, numbers, or codes for each of a plurality of colors / colors (see paragraphs [0110]-[0112], a database is preset to store the assignment of color names, color numbers, or color codes); matching / starting color scanning complete a sample color / color sample and harmonious color combinations of the sample color / harmonious colors to one of the assigned identification codes and/or a color names / color names, color numbers, or color codes (see paragraphs [0002] and [0110]-[0112], the color sample from the fabric or paint is scanned to allow the system to match the identification code and color name / color code or color names by searching the color database for a match to mark a completion of the scan); and labeling two or more goods individually / associating the fabric or paint by printing or saving the color scheme with color information for that particular fabric or paint with one of the assigned identification codes and color names / color names, numbers, or codes representing a color match / starting color scan complete with a color of each individual good, such that a consumer / user can match the identification codes of the goods to the identification codes and/or color names of

the sample color / color sample and harmonious color combinations / harmonious colors (see paragraphs [0102] and [0110]-[0112] and [0121], the fabric or paint is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification by the user).

However Rice fails to specifically suggest the identification code comprising color family indicia, color value indicia, and color selector device indicia.

Tracy '325 discloses the identification code comprising color family indicia / color selection group, color value indicia / color value number, and color selector device indicia / color selection indicia (see Tracy '325, col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and these coordinates relate to the color selection group, color value number, and color selection indicia). Tracy '325 also discloses matching harmonious color combinations of the sample color to one of the assigned identification codes (see Tracy '325, col. 5, lines 7-62, col. 4, lines 57-65, existing fabric, fiber, paint chip or other samples are used to match a color and value using the color wheel along with the preference of a two, three or four color harmonious balanced color combination [the noted color combination and color value are considered to be the identification code equivalent]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rice by using Tracy's '325 teachings by including the color family indicia, the color value indicia and the color selector device indicia to the identification code in order to enhance the match by considering

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harmonious color combination selection groups (see Tracy '325, col. 3, lines 15-20, abstract, lines 13-16).

As to claim 1, the discussions are addressed with respect to claim 12.

Re Claim 2: Tracy further discloses the color family indicia / color selection group is selected from a list consisting of red, red/orange, orange, yellow/orange, yellow, yellow/green, green, blue/green, blue, blue/violet, violet, and red/violet (see col. 3, lines 50-57).

Re Claim 3: Tracy further discloses the color value indicia / color value number is a number (see col. 3, lines 65-68, col. 4, lines 10-19, the color value number representing lightness or darkness ranges from values 1 to 7).

Re Claim 4: Tracy further discloses the color value indicia / color value number for each color of the plurality of colors is between 0 and 8 / from values 1 to 7 (see col. 3, lines 65-68, col. 4, lines 10-19, the color value number representing lightness or darkness ranges from 1 to 7 which is between 0 and 8).

Re Claim 8: Tracy further discloses the identification code / noted coordinate combination [similar to Rice's color names, numbers, or codes] for each of the plurality

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of colors further comprises a color selector device indicia / color selection indicia (see col. 4, lines 27-42).

Re Claim 9: Tracy further discloses the step of associating the unique identification code / noted coordinate combination [similar to Rice's color names, numbers, or codes] for each color displayed / color combination on the color selector device (see col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and each of these coordinates relate to a specific color selection group, color value number, and color selection indicia).

Re Claim 10: Rice further discloses the step of assigning a unique color name / color name to each identification code / color code (see paragraphs [0110]-[0112], each code has a corresponding color name and color number, also "Learning Web Design: A Beginner's Guide to HTML, Graphics, and Beyond" [as applied in previous Office Action] by Jennifer Niederst [Chapter 13, 2001, O'Reilly Media Inc, <http://www.learningwebdesign.com/colornames.html>], there is a list or table of different RGB values and the name associated with the specific RGB values).

Re Claim 11: Rice further discloses the step of cross-referencing matching and coordinating colors using a table listing at least a portion of the plurality of colors according to each color's identification code / color code and assigned color name /

color name (see paragraphs [0110]-[0112], a determination may be made for figuring the RGB values which make up the composition of a given materials color and most RGB values have specific names as described in the "Learning Web Design: A Beginner's Guide to HTML, Graphics, and Beyond" [as applied in previous Office Action] by Jennifer Niederst [Chapter 13, 2001, O'Reilly Media Inc, <http://www.learningwebdesign.com/colornames.html>], there is a list or table of different RGB values and the name associated with the specific RGB values).

Re Claim 25: Rice further discloses the step of submitting the goods / fabric or paint to a governing body / user and/or scanner to compare and match the color of each of the goods / fabric or paint with one of the plurality of colors assigned a unique identification code and color name / color name, number or codes (see paragraphs [0110]-[0112] and [0121], the user and/or scanner compare and match the fabric or paint to the database of color names, numbers or codes).

Re Claim 26: Rice further discloses the step of labeling each of the goods / associating the fabric or paint by printing or saving the color scheme with color information with indicia / color information representing that the governing body / user and/or scanner has compared and matched the color of each of the goods / fabric or paint with a corresponding unique identification code / color names, numbers, or codes (see paragraphs [0110]-[0112] and [0121], the user and/or scanner compare and match the fabric or paint to the database of color names, numbers or codes and the fabric or paint

is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification).

Re Claim 27: Tracy further discloses the assigning a unique identification code step includes the step of assigning an alpha-numeric identification comprising indicia for a color classification / color selector indicia, the color family / color selection group, and the color value / color value number (see col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, col. 4, lines 27-42, the color coordinates for each color relate to the color selection group, color value number, and color selection indicia).

As to claim 13, the discussions are addressed with respect to claim 2.

As to claim 14, the discussions are addressed with respect to claim 3.

Re Claim 17: Tracy further discloses the step of associating each color displayed / color combination on the color selector device with an identification code / noted coordinate combination and/or a color name [similar to Rice's color names, numbers, or codes, Rice teaches that the identification code has a corresponding color name {see Rice, paragraphs 0110-0112}] (see Tracy, col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and each of these coordinates relate to a specific color selection group, color value number, and color selection indicia).

As to claims 28-29, the discussions are addressed with respect to claims 25-26.

Re Claim 30: Rice discloses a method for creating a color matching and coordinating reference system / scan desired starting color for use by manufacturers and consumers of goods / user of fabric or paint (see paragraphs [0110]-[0112]), comprising the steps of assigning a unique identification code and color name / database of color names, numbers, or codes for each of a plurality of colors / colors (see paragraphs [0110]-[0112], a database is preset to store the assignment of color names, color numbers, or color codes); matching / starting color scanning complete a sample color / color sample and harmonious color combinations of the sample color / harmonious colors to one of the assigned identification codes / color names, color numbers, or color codes (see paragraphs [0002] and [0110]-[0112], the color sample from the fabric or paint is scanned to allow the system to match the identification code and color name / color code or color names by searching the color database for a match to mark a completion of the scan); submitting two or more goods / fabric or paint to a governing body / user and/or scanner to compare and match the color of each of the goods / fabric or paint with one of the plurality of colors assigned a unique identification code and color name / color names, numbers, or codes (see paragraphs [0110]-[0112] and [0121], the user and/or scanner compare and match the fabric or paint to the database of color names, numbers or codes); and labeling the goods individually / associating the fabric or paint by printing or saving the color scheme with color information for that particular fabric or paint with the matching / starting color scan complete identification code and color name

/ color names, numbers, or codes of each individual good, such that a consumer / user can correspond the identification codes and/or color name of the goods to the identification codes and/or color names of the sample color / color sample and harmonious color combinations / harmonious colors (see paragraphs [0110]-[0112] and [0121], the user and/or scanner compare and match the fabric or paint to the database of color names, numbers or codes and the fabric or paint is labeled by printing out or saving the color scheme with color information for that particular fabric or paint good for association or identification by the user).

However Rice fails to specifically suggest the identification code comprising color scale indicia, color family indicia, and color value indicia.

Tracy '325 discloses the identification code comprising color scale indicia / color shades [hue or true color], color family indicia / color selection group, and color value indicia / color value number (see Tracy '325, col. 1, lines 31-43, col. 4, lines 58-65, col. 5, lines 41-46, abstract, lines 15-16, the color coordinating combinations of the color selector device are assigned or noted and these coordinates relate to the color selection group, color value number, and color selection indicia, col. 4, lines 1-26, the color scale indicia are interpreted to be the color shades of the hue or true color). Tracy '325 also discloses matching harmonious color combinations of the sample color to one of the assigned identification codes (see Tracy '325, col. 5, lines 7-62, col. 4, lines 57-65, existing fabric, fiber, paint chip or other samples are used to match a color and value using the color wheel along with the preference of a two, three or four color harmonious

balanced color combination [the noted color combination and color value are considered to be the identification code equivalent]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rice by using Tracy's '325 teachings by including the color scale indicia, color family indicia, and the color value indicia to the identification code in order to enhance the match by considering harmonious color combination selection groups (see Tracy '325, col. 3, lines 15-20, abstract, lines 13-16).

As to claim 31, the discussions are addressed with respect to claim 26.

Re Claim 32: Rice further discloses including the step of providing a plurality of color selector devices / color wheels bearing the plurality of colors, wherein the color scale indicia / interior or exterior inspiration [similar to Tracy's '325 different color shades] of the identification code / color name, number, code for each color corresponds to one of the plurality of color selector devices bearing the particular color (see col. [0110]-[0112] and [0119]).

Re Claim 33: Rice further discloses including the step of cross-referencing matching and coordinating colors / scan desired starting color complete using a color selector device / Rice's system listing at least a portion of the plurality of colors according to each color's identification code and color name / color code, color name, and color numbers (see paragraphs [0110]-[0112], [0033], lines 1-3, the user and/or scanner

compare and match the fabric or paint to the database of color names, numbers or codes).

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard Krasnic whose telephone number is (571) 270-1357. The examiner can normally be reached on Mon-Thur 8:00am-4:00pm and every other Friday 8:00am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/J. W./

Supervisory Patent Examiner, Art Unit 2624